

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

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| In the Matter of: |) | NOTICE OF DETERMINATION |
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| Federal Bureau of Prisons |) | |
| U.S. Department of Justice |) | |
| Respondent |) | Docket No. CAA-RCRA-CWA-EPCRA- |
| |) | TSCA-03-2009-6022 |
| Federal Corrections Complex Allenwood |) | |
| Route 15 |) | |
| White Deer, Pennsylvania 17810 |) | |
| Facility |) | |

NOTICE OF DETERMINATION

Pursuant to the Final Policy Statement, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19,618 (April 11, 2000) (Self-Disclosure Policy), the U.S. Environmental Protection Agency, Region III (EPA) hereby issues this Notice of Determination (NOD) regarding violations by Federal Corrections Complex Allenwood (FCC Allenwood), a facility owned and operated by the Federal Bureau of Prisons, U.S. Department of Justice, of Section 3008(a) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928(a); the Pennsylvania Hazardous Waste Management Regulations (PaHWMR), 25 Pa. Code, Chapter 260a; Sections 113 and 608 of the Clean Air Act (CAA), 42 U.S.C. §§ 7413 and 7671g; Section 311(j) of the Clean Water Act (CWA), 33 U.S.C. § 1321(j); Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11022, and Sections 6 and 15 of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2605 and 2614, at the FCC Allenwood facility located in White Deer, Pennsylvania. The violations which are the subject of this NOD were voluntarily disclosed to EPA by FCC Allenwood by report submitted to EPA on November 8, 2007. This report was submitted to EPA pursuant to the Facility Audit Agreement between the U.S. Department of Justice, Federal Bureau of Prisons (BOP), and EPA, dated March 24, 2007.

I. SELF-DISCLOSURE POLICY

EPA issued the Self-Disclosure Policy to encourage regulated entities to conduct voluntary compliance evaluations and to disclose and promptly correct violations. As an incentive for companies to undertake self-policing, self-disclosure, and self-correction of violations, EPA may substantially reduce or eliminate gravity-based civil penalties for certain self-disclosed violations, however, EPA retains its discretion to recover any economic benefit gained as a result of noncompliance. Where the disclosing party establishes that it satisfies the following conditions, as set forth in the Self-Disclosure Policy, EPA will not seek gravity-based penalties for violations of the federal environmental requirements: (1) discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary disclosure; (3) prompt disclosure; (4) discovery and disclosure independent of government or third-party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100 percent, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75 percent, if the disclosing entity satisfies conditions (2) - (9), above. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In the report provided to EPA on November 8, 2007, FCC Allenwood disclosed the violations listed below.

Violation 1: FCC Allenwood violated 40 C.F.R. § 82.156(i) by failing to perform leak rate calculations for appliances containing greater than 50 pounds of refrigerant at times when equipment was in need of recharging or repair.

Violation 2: FCC Allenwood violated 40 C.F.R. § 82.166(k) by failing to maintain service records for calendar year 2005 for appliances containing greater than 50 pounds of refrigerant.

Violation 3: FCC Allenwood violated 25 Pa. Code § 270a.1, which incorporates by reference 40 C.F.R. § 270.1(b), and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), by

operating a hazardous waste storage facility without a permit or interim status while failing to satisfy the conditions of the "less than 180-day" generator accumulation exemption of 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34, by the following actions:

- a) FCC Allenwood stored hazardous waste in the UNICOR waste storage room without marking the container with the words "hazardous waste." Moreover, the containers were not marked with an accumulation start date and some of the containers were not in good condition. In addition, the wastes were not classified in order to ensure that incompatible wastes were stored in proximity to each other.
- b) FCC Allenwood stored hazardous waste in the inactive camp hazardous waste building without marking the container with the words "hazardous waste." Moreover, the containers were not marked with an accumulation start date and some of the containers were not in good condition. In addition, some of the wastes were incompatible.
- c) FCC Allenwood had an open container of waste in the FCI paint shop even though waste was not being added or removed.
- d) FCC Allenwood did not conduct weekly inspections of the UNICOR warehouse waste storage room.

Violation 4: FCC Allenwood violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(2), which in turn requires compliance with 40 C.F.R. § 265.173, by failing to close hazardous waste containers.

Violation 5: FCC Allenwood violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. 262.34(d)(2), which in turn requires compliance with 40 C.F.R. § 265.171, by failing to store hazardous waste in good containers.

Violation 6: FCC Allenwood violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(2), which in turn requires compliance with 40 C.F.R. § 265.177, by storing incompatible wastes together.

Violation 7: FCC Allenwood violated 25 Pa. Code § 262a.10, which incorporates by reference 40 C.F.R. § 262.34(d)(2), which in turn requires compliance with 40 C.F.R. § 265.174, by failing to conduct weekly inspections of hazardous waste storage areas.

Violation 8: FCC Allenwood violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.13, by failing to properly manage universal wastes at the inactive camp garage area and the FCI Low electric shop in accordance with the

requirements of 40 C.F.R. § 273.13.

Violation 9: FCC Allenwood violated 25 Pa. Code § 266b.1, which incorporates by reference 40 C.F.R. § 273.14, by failing to adhere to the labeling and marking requirements for universal waste with respect to universal waste lamps at the inactive camp garage area.

Violation 10: FCC Allenwood was an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 and a “non-transportation” facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto, and 36 Fed. Reg. 24,080 (1971), engaged in storing or consuming oil or oil products, which, due to its location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110. FCC Allenwood’s Spill Prevention, Control and Countermeasure (SPCC) Plan failed to comply with the provisions of 40 C.F.R. § 112.3 with respect to the SPCC Plan’s certification by a Registered Professional Engineer. Moreover, FCC Allenwood violated 40 C.F.R. § 112.7 because its SPCC Plan was deficient in the following manner:

- a) FCC Allenwood’s SPCC Plan did not address all regulated oil containers;
- b) FCC Allenwood’s SPCC Plan did not follow the proper sequence;
- c) FCC Allenwood’s SPCC Plan did not include a cross reference to the requirements of the SPCC regulations; and
- d) FCC Allenwood’s SPCC Plan did not address inspection requirements, training, security, tank car/tank truck loading and unloading or facility drainage.

Violation 11: FCC Allenwood is required to submit an inventory (Tier I) or a Tier II form to the State Emergency Response Committee. FCC Allenwood reported fuel oil and diesel fuel as the same chemical for purposes of Tier II reporting, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25.

Violation 12: FCC Allenwood is required to submit an inventory (Tier I) or a Tier II form to the Local Emergency Planning Committee. FCC Allenwood reported fuel oil and diesel fuel as the same chemical for purposes of Tier II reporting, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25.

Violation 13: FCC Allenwood is required to submit an inventory (Tier I) or a Tier II form to the fire department. FCC Allenwood reported fuel oil and diesel fuel as the same chemical for purposes of Tier II reporting, in violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. § 370.25.

Violation 14: FCC Allenwood stored PCB waste (39 light ballasts) at the inactive camp

hazardous waste storage area in plastic bags and buckets, without labels or any marking indicating when the storage began, in violation of 40 C.F.R. § 761.65(c)(8).

2. Based on the information provided by FCC Allenwood, EPA has determined that FCC Allenwood has met each of the following conditions set forth in the Self-Disclosure Policy, as explained below.

(a) FCC Allenwood has stated that the violations were discovered through an environmental audit which was part of FCC Allenwood's environmental management system.

(b) FCC Allenwood has stated that the violations were identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) The violations were promptly disclosed to EPA in writing by FCC Allenwood.

(d) FCC Allenwood has stated that the violations were identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, report by a "whistleblower" employee or imminent discovery by a regulatory agency.

(e) FCC Allenwood has described the steps the facility has taken to correct the violations.

(f) FCC Allenwood has stated that the potential violations are not repeat violations from any prior self-disclosure or enforcement action within the past three years.

(g) FCC Allenwood has stated that the potential violations did not (1) result in serious actual harm, or present an imminent and substantial endangerment to human health or the environment, or (2) violate the specific terms of any judicial or administrative order or consent agreement.

(h) FCC Allenwood has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Self-Disclosure Policy to its disclosure.

III. DETERMINATION

Pursuant to the Self-Disclosure Policy, and based on information provided by FCC Allenwood, EPA makes the following determination concerning each of the violations identified above:

1. FCC Allenwood's failure to comply with the above listed regulations has resulted in violations of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a); the PaHWMR, 25 Pa.

Code, Chapter 260a; Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671g; Section 311(j) of the CWA, 33 U.S.C. § 1321(j); Section 312 of EPCRA, 42 U.S.C. § 11022, and Sections 6 and 15 of TSCA, 15 U.S.C. §§ 2605 and 2614, at the FCC Allenwood facility located in White Deer, Pennsylvania.

2. The authority to seek civil penalties for the violations recited herein is found at Section 3008(g) of RCRA, 42 U.S.C. § 6928(g) and Section 113(d) of the CAA, 42 U.S.C. § 7413(d).
3. Pursuant to the Debt Collection Improvement Act of 1996, (DCIA) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Penalty Inflation Rule), violations of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and Sections 113 and 608 of the CAA, 42 U.S.C. §§ 7413 and 7671g, which occurred subsequent to January 30, 1997, and through March 15, 2004, are subject to a statutory maximum penalty of \$27,500.00 for each day during which a violation occurred. Violations of the above-cited statutes which occurred after March 15, 2004, and through January 12, 2009, are subject to a statutory maximum penalty of \$32,500 for each day during which a violation occurs.
4. EPA has calculated the gravity-based penalty for the disclosed violations based upon the *RCRA Civil Penalty Policy*, dated June 2003, the *Clean Air Act Stationary Source Civil Penalty Policy*, dated October 25, 1991, and the *Appendix X, Clean Air Act Civil Penalty Policy for violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances containing Refrigerant*, dated June 1, 1994, and in light of the information available to EPA at this time, the total gravity-based civil penalty for the disclosed violations described herein would be eighty three thousand, eight hundred thirteen dollars (\$83,813.00).
5. Based upon the information provided by FCC Allenwood and EPA's consideration of the aforementioned policy, FCC Allenwood has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100 percent reduction in the gravity-based component of the civil penalty for the disclosed violations. No significant economic benefit of non-compliance has accrued to FCC Allenwood concerning the violations described herein. Therefore, EPA will not assess a gravity-based civil penalty against FCC Allenwood concerning the aforementioned violations, nor will the Agency assess a penalty concerning any economic benefit of noncompliance which has accrued to FCC Allenwood.

IV. RESERVATION OF RIGHTS

1. This NOD resolves only the potential claims for civil penalties pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), and Section 113(d) of the CAA, 42 U.S.C. § 7413(d), for the violations alleged herein and as specifically described in the report submitted on behalf of FCC Allenwood on November 8, 2007. Nothing in this NOD is

intended, nor shall be construed, to operate in any way to resolve criminal liability, if any, of FCC Allenwood. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of all federal environmental law.

2. This NOD shall not relieve FCC Allenwood of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of RCRA, CAA, CWA, EPCRA, and TSCA, or any regulations promulgated thereunder.
3. EPA reserves the right to undertake any action against any person, including FCC Allenwood, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
4. EPA reserves the right to revoke this NOD and thereby, render such Notice of Determination null and void if and to the extent that any information or certification provided by FCC Allenwood, upon which any civil penalty mitigation granted herein for such violation was based was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by FCC Allenwood.

In issuing this NOD, EPA seeks to promote self-auditing by FCC Allenwood and expects FCC Allenwood to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the
U.S. Environmental Protection Agency, Region III**

Date:

3/31/09

By:



Samantha Phillips Beers, Director
Office of Enforcement, Compliance and
Environmental Justice